XII-188/(Jail)
C.J.P.R.—5,000-9-81

Cr.A No. 2530/97

(21)

CF0000062358

APPEAL OF PRISONER

No. 110 Name रामऔतार

Father's name रामनरसाद

Residence चरचरी चौकी Age 30वर्ष

Sentenced to 302 IPC on 28-7-97 S.T.N 296/95

Under section 302 IPC आजीवन आदेश न्यायाधीश सूरजपुर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ——————

2 Date of which copy received 28-7-97

3 Date on which Appeal sent 28-7-97

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 110 Name रामऔतार S/o रामनरसाद

Continued in 26-7-97 Jail जिला जेल अम्बिकापुर

No. 2398 dated 28-7-97 198 97

Forwarded to the CHIEF JUDICIAL MAGISTRATE अम्बिकापुर

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

अंक 7 - निर्णय प्रति 8 पन्ने

अधीक्षक
जिला जेल अम्बिकापुर (सरगुजा)

Superintendent/Central/District/Sub-Jail

Date of receipt in C. J. M.'S Office 22-8-97

Date of receipt of record to accompany 6-11-97

Memo of Appeal of the Appeliate Court, उच्च न्यायालय म.प्र. जबलपुर

No. 8 Dated 6 198 11 97

Forwarded to the उच्च न्यायालय म.प्र.ए. जबलपुर

C.J.Magistrate

मुख्य न्यायिक मजिस्ट्रेट
अम्बिकापुर

Date of receipt in Appliate Court

(P.T.O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25) (23)

आदेश पत्रक

मामला क्रमांक CRA NO. 253/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. DHIRENDRA MISHRA, JJ.

16-2-2006

Shri Atul Pandey, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

The accused/appellant has preferred this appeal under Section 374 (2) of the Cr.P.C. questioning the legality of the judgment of conviction and order of sentence dated 26-7-97 passed by learned Additional Sessions Judge, Surajpur, in S.T. No.296/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that brother of the deceased namely Ramlal gave a first information Ex.-P/1 at 9 a.m. in the police chowky Balangi of police station Chandani to the effect that today he was at his residence. Jageshwar came to his house and informed that your brother Moonkaran Singh has been murdered in Lohran Para. On hearing this, he along with his brother Lalman and Patel Ram Sai went to Lohran Para and saw that number of persons were standing there, and saw that his brother Moonkaran Singh was lying dead. His neck was found cut and blood was oozing out of it. On enquiry, the mother of accused Ramautar informed that her son has run away towards the forest after committing the murder. Based on information Ex.-P/1 F.I.R. Ex.-P/10 was registered. Receiving this report,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

investigating officer left for the scene of occurrence and prepared Panchanama Ex.-P/2 of the dead body of Moonkaran Singh. The site plan Ex.-P/3 of the place of occurrence was also prepared. On production by the accused, the weapon of offence i.e. axe was taken into possession by the police in the Police Chowky Balangi itself. The clothes of the accused i.e. one Towel, one undergarment (Chaddi) stained with blood, and axe stained with blood were taken into possession under Ex.-P/5. The plain soil and blood stained soil was taken into possession under Ex.-P/6. One sealed packet of clothes of the deceased was taken into possession under Ex.-P/7. S.H.O. Police Station Chandani requested the Assistant Surgeon, Primary Health Centre, Wadraf Nagar, Ex.-P/11, as to whether injuries which were found on the body of Moonkaran Singh could be caused by the axe in question. He replied that the injuries which were found on the body of Moonkaran Singh could be caused by the axe in question. His report is Ex.-P/13. The dead body of Moonkaran Singh was sent for postmortem examination to the Community Health Centre, Wadraf Nagar where Dr. Arvind Bhatt (PW-13) conducted the postmortem and prepared postmortem report Ex.-P/12. The seized articles were sent for chemical examination to the F.S.L., Sagar from where report Ex.-P/14 was received.

After completion of the investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate, 1st Class, Surajpur who in turn committed the case to the Sessions Judge, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the charge against the accused/appellant examined 13 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused denied the prosecution evidence appearing against him and stated that he was not at the place of occurrence and he had gone to village Mudia. In reply to

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

question No.21 that blood was present on the clothes of the accused, he stated that when he was running, he fell down and on account of that his clothes were stained with blood. Learned Additional Sessions Judge after hearing argument of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Moonkaran Singh is not in dispute.

As far as involvement of the accused/appellant in committing murder of the deceased is concerned, learned counsel for the accused/appellant argued that in the first information report given by Ram Lal this fact has not been mentioned that he was informed by Jageshwar that the accused has committed murder of the deceased, whereas, PW-3 Jageshwar has stated that he saw the accused assaulting the deceased with axe. Had he saw the accused assaulting the deceased with axe, then in the natural course, he ought to have informed Ram Lal that the accused has committed murder of Moonkaran Singh, therefore, presence of Jageshwar on the place of occurrence is doubtful. He further argued that in the site plan Ex.-P/3 presence of Jageshwar has not been indicated to the effect that from which place he witnessed the crime, therefore, there is no evidence that the accused was author of the crime in question.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the record. It is true that in the first information report Ex.-P/1 given by brother of the deceased Ram Lal, it has not been mentioned that Jageshwar informed him that the accused has committed murder, rather this first information report Ex.-P/1 shows that mother of the accused informed Ram Lal that her

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

son has murdered Moonkaran Singh. PW-1 Ram Lal has stated in his evidence that Jageshwar informed that his brother has been murdered in Lohar Para. When he went along with his brother on the scene of occurrence, he saw the injuries on the neck of his brother, by that time, he was already dead. The accused's wife and mother were present there. On enquiry, mother of the accused informed him that her son has run away after attacking the deceased with axe, on which he lodged the report.

Perusal of the evidence of PW-3 Jageshwar shows that he had witnessed the crime in question and has stated that on the fateful day he was going to collect flowers of Mahua tree. He saw that the accused and the deceased were sitting near the Mahua tree of Ram Dayal. When he crossed the Mahua tree, he heard cries "Oh Mother" of Moonkaran Singh, on seeing backward, he saw that the accused was assaulting the deceased with axe, thereafter he went and informed the brother of the deceased. But he has not stated that he informed the brother of the deceased that the accused had assaulted with axe. This witness has not been cross-examined to the aspect that whether he had informed PW-1 Ram Lal about attacking by the accused to the deceased. Therefore, this omission cannot be taken as material, particularly, looking to the other circumstances that the accused himself went to the Police Chowky Balangi and produced the blood stained axe which was taken into possession under Ex.-P/4. Apart from that, one Towel and underwear stained with blood were also taken into possession from the body of the accused under Ex.-P/5 and same were sent for chemical examination to the F.S.L., Sagar in which it has been mentioned that the articles were found stained with blood. Having blood on the underwear and Towel has not been disputed by the accused in his statement recorded under Section 313 of the Cr.P.C.. He has replied that when he was running, he fell down and on account of that the clothes were stained with blood. Moreover, even

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —S—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

though mother and wife of the accused namely PW-4 Phool Basiya and PW-5 Phool Jhariya have turned hostile, but even mother of the accused Phool Basiya about whom PW-1 Ram Lal has stated that she disclosed that her son has murdered Moonkaran Singh. PW-4 Phool Basiya has stated that she heard rumour in the village that her son has murdered Moonkaran Singh. Apart from that, PW-2 Ram Sai who was Patel of the village Charchari has stated that Ram Lal came to his house at about 8 a.m. and informed him that Moonkaran Singh has been murdered by the accused. Therefore, within no time Ram Lal informed Patel of the village that his brother has been murdered by the accused. Even Ram Dulare PW-6 has stated that Ram Dayal came and informed that the accused has murdered the deceased with axe. On hearing this, he immediately went to the place of occurrence and saw that Moonkaran Singh was lying dead near the Mahua tree, the accused and his wife were present there. PW-10 Lal Man brother of the deceased who accompanied PW-1 has also stated that when they reached on the spot, mother of the accused disclosed that her son has murdered the deceased. As per the evidence of Dr. Arvind Bhatt (PW-13) there were 4 incised wounds on the neck, as a result of injuries occipital bone was found fractured, wind pipe and food pipe were also found cut and the deceased died on account of haemorrhage and shock. Therefore, in view of the above circumstantial and ocular evidence, argument advanced by learned counsel for the appellant is devoid of any merit.

As far as presence of eyewitness Jageshwar (PW-3) has not shown in the site plan is concerned, this fact also in view of the clinching legal evidence, mere omission of this fact in the site plan does not affect the prosecution case.

In view of the above, we are of the considered opinion that finding recorded by the trial Court convicting the accused for commission of offence

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	under Section 302 of the I.P.C. is based on the legal evidence. We do not find any illegality or infirmity in the judgment of the trial Court. In the result, the appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. Sd/- L.C. BHADOO Judge Barve	Sd/- DHIRENDRA MISHRA Judge